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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,161	05/20/2002	Nikolai Grigorievich Lyapko	PAA-101-A	4995

7590

05/04/2004

Irving M Weiner  
Weiner & Burt  
PO Box 186  
Harrisville, MI 48740

EXAMINER

LUCCHESI, NICHOLAS D

ART UNIT	PAPER NUMBER
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3764

12

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/031,161

Applicant(s)

LYAPKO, NIKOLAI  
GRIGORIEVICH

Examiner

Nicholas D Lucchesi

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 19-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 19-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19,21,27, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelfer et al in view of Leupold.

Gelfer teaches a body treatment pad having a flexible base member 10 made of plastic material and a plurality of needles 14,15 each having a base end and a tip 17. It is inherent that the base member has a certain degree of elasticity.

Gelfer does not disclose the increased thickness end being located inside of the base member. However, Leupold teaches that a needle 8 may be embedded in a base material (see fig. 3).

It would have been obvious to one skilled in the art to embed the needles of Gelfer within the base, as taught by Leupold, if one wished to further stabilize the anchoring of the needles to the base, to help prevent the needles from breaking off.

Regarding the method steps recited in these claims, it is noted that such steps Recited in apparatus claims are not given patentable weight, as they do not further limit the structure of the device.

Art Unit: 3764

Claims 20, 22-26,28,30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelfer et al in view of Leupold as applied to claims 19,21,27,29 above, and further in view of Yoneda et al.

The device of Gelfer et al as modified by Leupold does not disclose lugs on the Bases of the needles, that are enveloped by the base member.

Yoneda et al disclose a cone or trapezoidal shaped needle (fig. 2 and 6) that could be modified in the form of a nail shaped needle 12 which includes an increased Thickness 15, with a lug 13.

It would have been obvious to one skilled in the art to modify the needle of Gelfer et al as modified by Leupold to have a lug at the bottom, as taught by Yoneda, in view of Yoneda's teaching that such a lug allows for increased retention of the needle.

### ***Response to Arguments***

Applicant's arguments filed 12/31/03 have been fully considered but they are not persuasive.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 3764

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Nicholas D Lucchesi at telephone number 703-308-2698.

May 3, 2003



**NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**